THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.22538 of 2001

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Dated:20.10.2005

Between:

M/s. Adarsh Education Society

a society under the Registration Act.XXI of 1860

through its President P.S.Rao,
having its office at Vinayak Nagar, Pedagantyada,
VISAKHAPATNAM - 530 044.

..... PETITIONER

AND

The State of A.P. through its Secretary, Municipal & Urban

Development Department,
Secretariat, Hyderabad, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.22538 of 2001

ORDER:

M/s.Adarsh Educational Society assails the letter, dated 20.03.2001, issued by the Visakhapatnam Urban Development Authority (VUDA), the second respondent herein, and consequential demand notice, dated 10.10.2001, calling upon the petitioner to pay a sum of Rs.28,784/- within seven days on pain of facing necessary action under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864.

The case of the petitioner in a nutshell is that the petitioner obtained licence in respect of 22 shops of VUDA situated at shopping complex adjacent to Pedagantyada for running a school, that as per the conditions of licence, the period of licence is thirty years, that the licence fee to be enhanced once in five years at the rate of 33%, that in 1997 the petitioner also obtained an open space adjacent to the licensed shops agreeing to pay the rent separately, and therefore, the impugned letter demanding the rent at the rate of Rs.10,427/- per month for the shops, and Rs.3,272/- per month for the open space, is illegal, and amounts to unilateral enhancement of the licence fee. This Court while admitting the Writ Petition on 31.10.2001, ordered interim suspension on condition of the petitioner depositing licence fee at the rate of Rs.10,427/- per month for the shops, and Rs.3,272/- per month for the open space, with effect from 01.11.2001.

The Legal Officer of VUDA has filed a detailed counter affidavit. The case projected therein is as follows. In 1994 VUDA issued a notification inviting applications to give licence in respect of the shops in the shopping complex in Pedagantyada layout. One T.O.Rajappan and Smt.Windie J.Mathews made an application on 25.07.1994, and the licence was issued to T.O.Rajappan, who agreed to pay a sum of Rs.7,000/- as licence fee for the shops. Subsequently, an agreement was entered into with T.O.Rajappan. He took possession on 31.01.1995 and started Adarsh Public School. On 26.06.1996, M/s. Adarsh Public School, Visakhapatnam, informed that as per the relevant norms for recognition of the School, licence is required for a minimum period of thirty years, and requested for necessary variations and conditions of the licence. Accordingly, VUDA cancelled the agreement entered into with Sri T.O.Rajappan on 19.09.1994, and reallotted the 22 shops in favour of M/s.Adarsh Public School run by the petitioner-Society, subject to the conditions laid down therein. As per these conditions, the licensee is liable to pay enhanced licence fee at 33% for every five years, subject to renewal of the licence. It is further stated that as per the procedure in vogue, the initial period is five years, renewable for five years, subject to enhancement at 33%. Accordingly, by

impugned letter dated 20.03.2001, the petitioner was requested to pay enhanced licence fee of Rs.10,427/- per month for shops, and Rs.3,272/- per month for the open space. The petitioner was also requested to furnish necessary stamps for execution of fresh licence agreement and when he failed to do so, a demand notice was issued on 10.10.2001.

The learned counsel for the petitioner, Sri Madhusudan, submits that the initial period of licence was for thirty years, and therefore, VUDA cannot turn around and reduce the licence period requiring the petitioner to obtain the renewal once in five years. Secondly, he would urge that the licence fee cannot be enhanced without notice to the petitioner. **Per contra,** the learned Standing Counsel for VUDA, Ms. Preeti Reddy, while taking this Court through the counter affidavit, submits that the original licence agreement entered into by VUDA by T.O.Rajappan was cancelled, and therefore, the petitioner cannot rely on the conditions therein.

The counter affidavit is filed by VUDA on 19.08.2005. The petitioner has not filed any reply affidavit, and therefore, the counter averments stand unrebutted. Be that as it is, as seen from the counter affidavit, after cancelling the licence agreement in favour of T.O.Rajappan, VUDA issued a fresh licence to Adarsh Public School, subject to, *inter alia,* the following conditions.

b) The existing 22 shops are hereby ordered on licence basis for 33 years @ Rs.7,000/- per month as licence fees subject to enhancement at 33% for every 5 years over and above the licence fee then existing. After completion of the licence period the buildings should be handed over back to VUDA in good condition.

c) Allot the vacant adjacent land to shopping complex measuring 0.61 cents (2952 sq.yards) on licence basis in favour of Adarsh Educational Society @ Rs.10/- per sq.yard per year subject to enhancement @ 33% for every 5 years over and above the licence fee then existing, for a period of 30 years for running Adarsh Public School. After completion of licence period, the society should handover the existing structures along with the land in good condition to VUDA.

d) The society should attend for registration of the licence agreement for both the 22 shops and 0.61 cents land at their cost in consultation with the Registration Department.

e) The major maintenance works for the 22 shops will be borne by VUDA and all other repairs and partitions etc. if any, shall be borne by society itself and keep the premises in good condition.

f) The licence fee for the land may also be paid along with licence fee for 22 shops every month regularly.

g) The school buildings should be constructed on the vacant land of 0.61 cents (2952 sq.yards) duly leaving the set backs as per the rules imposed by the local authority.

h) The licence fee for the land will come into force on the date of handing over the land to the society.

i) The society has to pay one year licence fee for the land @ Rs.10/- per sq. yard per year i.e.,Rs.29,520/- on or before 20-09-1996 to confirm the offer of the allotment. The Demand Draft should be drawn in favour of the Vice-Chairman, Visakhapatnam Urban Development Authority, Visakhapatnam.

A reading of the above conditions would show that VUDA issued the impugned letter in accordance with the above conditions, and being a party to the licence, the petitioner cannot raise the ground that there is no notice to it. The conditions of licence do not contemplate notice every time the licensor enhances the rent. It is the right of the licensor to demand enhanced licence fee after completion of every five years or three years, as the case may be. The new licence in favour of Adarsh Public School came into force in June 1996, and after expiry of five years it was enhanced to Rs.10,427/- per month, which is in accordance with the conditions of the licence. Therefore, reliance placed by the petitioner on the conditions of the lease agreement executed by VUDA in favour of T.O.Rajappan is misconceived. Even in the writ affidavit, the petitioner admits its possession. If any further grievance remains, as rightly pointed out by the learned Standing Counsel for VUDA, the petitioner has to seek relief in a Civil Court, as the relationship between the petitioner and VUDA is covered by the licence agreement, which is purely a civil dispute.

This Writ Petition is misconceived, and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

20.10.2005

vs

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